

1984 WL 249990 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 10, 1984

***1 SUBJECT: Revenue and Taxation—Property Tax—Merchants' Inventory.**

(1) The return of a merchant's inventory is to be submitted to the South Carolina Tax Commission on or before the fifteenth day of the fourth month following the close of the merchant's customary accounting year for income tax purposes.

(2) The payment of taxes upon such inventory is generally due and payable between September 15th and December 31st of the tax year. In those counties that have special legislation and in municipalities a different date, however, may have been provided. A tax paid after such date would be untimely and in such cases the exemption cannot be granted.

(3) The South Carolina Tax Commission has the responsibility for the accuracy of the return and the valuation of a merchant's inventory for ad valorem taxation.

(4) The difference between the sums appropriated for reimbursement and the tax due is payable in the fiscal year of the deficit funding.

(5) No statutory authority exists for the filing of an amended property tax return. The same should not therefore affect the reimbursement for the tax not collected by reason of the exemption. Where, however, there is a refund of a tax after reimbursement to the political entity, the amount of the refund attributable to the reimbursement should be paid to the Comptroller General.

Honorable Earle E. Morris, Jr.
Comptroller General

STATEMENT:

The General Assembly in the 1984-85 Appropriation Act phases out over a three-year period the tax upon merchants' inventory. The act requires reimbursement by the State to the counties and municipalities of the tax not collected by reason of the phase out. The Comptroller General's office is charged with the responsibility of payment to the counties and municipalities. By reason thereof the following questions are presented.

QUESTION 1. The act provides that:

'The exemption provided by this section is not allowed if the return is received by the Commission after the due date or the tax due is received by the county or municipality after the date due.'

What are the due dates?

QUESTION 2. The act provides that:

'The South Carolina Tax Commission shall annually notify each county auditor of the fair market value of merchants' inventory in the manner provided by § 12-37-1420 * * *.'

What is the responsibility of the Tax Commission and the Comptroller General's office as to the accuracy of the returns and the fair market valuation of the inventory?

QUESTION 3. The act further provides that:

'In any year that the State does not reimburse the counties and municipalities one hundred percent, the counties and municipalities shall credit the percentage reimbursed to the merchant's account and bill the remainder to the merchant.'

When would the tax on the remainder be due and what effect, if any, is there upon the exemption already granted?

QUESTION 4. What effect does the filing of an amended return have upon the reimbursement, et cetera?

APPLICABLE LAW:

*2 Section 16 of the Permanent Provisions of the 1984-85 Appropriation Act.

DISCUSSION:

Question 1—The due date of the tax return and tax payment.

The tax return is required by § 12-37-970. The return is to be submitted:

'* * * by the taxpayers to the Tax Commission on or before the fifteenth day of the fourth month after the close of the accounting period regularly employed by the taxpayer for income tax purposes in accordance with Chapter 7 of Title 12.'

A return submitted after the fifteenth day of the fourth month following the close of the merchant's accounting year for income taxation would be untimely and the exemption could not be granted.

The date for payment of taxes due upon a merchant's inventory is provided by § 12-45-70. The tax is payable between the fifteenth day of September and the thirty-first day of December after their assessment in each year. Special legislation, however, exists for some counties that provides different payment dates and additionally municipal ordinances may provide for different payment dates. As an example, Act 599, Acts of 1971, provides that taxes in Richland County are payable between September 15th and January 31st after their assessment in each year.

CONCLUSION:

(1) The return of a merchant's inventory is to be submitted to the South Carolina Tax Commission on or before the fifteenth day of the fourth month following the close of the merchant's customary accounting year for income tax purposes.

(2) The payment of taxes upon such inventory is generally due and payable between September 15th and December 31st of the tax year. In those counties that have special legislation and in municipalities a different date, however, may have been provided. A tax paid after such date would be untimely and in such cases the exemption cannot be granted.

Question 2—The responsibility of the Tax Commission and the Comptroller General's office concerning the accuracy of the returns and the fair market valuations.

The 1984-85 Appropriation Act, inter alia, provides that the South Carolina Tax Commission shall annually notify each county auditor of the fair market value of the merchant's inventory. Section 12-37-970 provides that the assessment (valuation) is to

be 'determined by the Tax Commission from property tax returns submitted by the taxpayers to the Commission'. Section 12-37-1420 further mandates such action by the Commission. It provides that:

'The Tax Commission shall fix the value of the inventories, machinery, equipment, furniture and fixtures for each year, and they shall certify such valuation to the several county auditors who shall place it on their records as the value of such property for taxation. * * *.'

Section 12-37-930 provides that the valuation is to be the property's true value in money.

The Tax Commission therefore has the responsibility for the valuation and the accuracy of the return. The Comptroller General's office, however, should advise the Commission of any information that it has that would enhance the accuracy or disclose any known errors.

CONCLUSION:

***3** The South Carolina Tax Commission has the responsibility for the accuracy of the returns and the valuation of a merchant's inventory for ad valorem taxation.

Question 3—The failure to appropriate full funding and when the difference is due and payable.

Should the General Assembly fail to appropriate funds sufficient to fund the tax loss, the difference in the appropriated funds and the tax due is due and payable in the same year. The General Assembly and the counties are required to adopt annual budgets and with proper funding by [Article X, § 7 of the South Carolina Constitution](#). The fiscal year was formerly provided by [Article X, § 10](#) of the Constitution. Section 11-9-80 prescribes that the State's fiscal year begins on July 1st and ends June 30th following. A county has the same fiscal year, § 4-9-140. The fiscal year of a municipality may differ, however. Whether the General Assembly does or does not fully fund the loss in revenue would be known in the same fiscal year of the deficit funding and before the tax books are prepared for the counties. Under such circumstances, the difference in the appropriation and the actual tax would be included in the duplicate prepared during the year of deficit funding. The difference would then be payable as set forth in question one. With reference to a municipal fiscal year that differs from that of the State and county, the difference would be payable to the municipalities in the tax year that the municipality copies the tax duplicate as provided by [Article X, § 4](#), [§ 12-37-30](#) and [§ 12-37-40](#).

CONCLUSION:

The difference between the sums appropriated for reimbursement and the tax due is generally payable in the fiscal year of the deficit funding.

Question 4—What effect does the filing of an amended return have upon the reimbursement?

We do not know of any authority for the filing of an amended return. Section 12-3-140(22) authorizes the Commission to make additional assessments on incorrect returns within a three-year period. The tax on the additional assessments could not be timely paid within the meaning of the statute and hence the exemption would not apply thereto.

Notwithstanding, there may be instances where a tax is overpaid. Any refund in such circumstances should be reduced by the amount attributable to and paid from State funds. Such amounts should further be paid over to the Comptroller General.

CONCLUSION:

No statutory authority exists for the filing of an amended property tax return. The same should not therefore affect the reimbursement for the tax not collected by reason of the exemption. Where, however, there is a refund of a tax after reimbursement to the political entity, the amount of the refund attributable to the reimbursement should be paid to the Comptroller General.

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